

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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IN RE HERLEY INDUSTRIES INC.      Action No.  
SECURITIES LITIGATION              #06-2596 (JRS)

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IN RE DERIVATIVE LITIGATION      Action No.  
HERLEY INDUSTRIES INC.,            #06-2596 (JRS)

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CONFIDENTIAL

One Logan Square  
Philadelphia, Pennsylvania  
May 13, 2009  
9:36 a.m.

VIDEOTAPED DEPOSITION of MYRON LEVY, before S.  
Arielle Santos, Certified Shorthand Reporter, Certified  
LiveNote Reporter and Notary Public.

HUDSON REPORTING & VIDEO

1-800-310-1769

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2 a date up there but page 21, I don't know.

3 MR. SMITH: It starts with  
4 the sentence, "Our level of  
5 intercompany sales increased from  
6 approximately 6.1 million." I think  
7 that's it.

8 MR. MCNEELA: Yeah, that is  
9 the page.

10 THE WITNESS: Am I missing  
11 something?

12 BY MR. MCNEELA:

13 Q Are you looking at Exhibit 16?

14 A Yes.

15 Q Okay.

16 (Whereupon a discussion is  
17 held off the record.)

18 BY MR. MCNEELA:

19 Q Now, I would like to direct your  
20 attention down to about two-thirds of the way down,  
21 the last paragraph with the double dashes in front of  
22 it, do you see that paragraph that begins "an  
23 increase"?

24 A Yes.

25 Q Okay. I am going to read that

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2 paragraph out loud, "An increase of approximately  
3 935,000 in legal costs associated with Robinson  
4 Laboratories and a continuing investigation by the  
5 U.S. Attorneys Office in Pennsylvania which inter  
6 alia involves pricing under two contracts with the  
7 U.S. Department of Defense relating to voltage  
8 control oscillators and a contract relating to power  
9 heads."

10 Did I read that correctly, Mr. Levy?

11 A Yes, you did.

12 Q Is that the first time that Herley  
13 ever disclosed the existence of the investigations in  
14 a corporate filing?

15 A I believe so.

16 Q Why didn't Herley reveal the  
17 existence of the investigation in its prior corporate  
18 filings?

19 A Well, let me relate as to why we  
20 disclosed this and maybe that will lead into why we  
21 didn't disclose in the past.

22 In reviewing the financial  
23 statements, our legal expenses have escalated  
24 substantially and it was one of the major reasons why  
25 our SGNA, if you will, was increasing. And based on

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2 what was going on in '05, we saw them potentially  
3 increasing as we proceeded forward and was  
4 appropriate disclosure to say, Hey, my legal expenses  
5 went up almost a million dollars which is a  
6 significant number within the SGNA category and  
7 therefore we disclosed what caused it, the  
8 investigation and the Robinson suit.

9 Q So it was just related to legal  
10 expenditures?

11 A That is correct.

12 Q Did you think that the information  
13 was related to any of the other representations that  
14 Herley made in its corporate filings?

15 MR. SMITH: Objection.

16 THE WITNESS: I don't know  
17 what representations you are  
18 referring to.

19 BY MR. MCNEELA:

20 Q Okay. We will get into that. The  
21 first -- let's turn to Exhibit 15, which is the 2004  
22 10-K for the year ended August 1st, 2004.

23 Now, based on your prior testimony, I  
24 assume you agree that there was no disclosure of the  
25 government investigation in this corporate filing; is

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that correct?

A That is correct.

Q So let's turn back -- I'm sorry -- to Exhibit 16, which is a 2005 corporate filing.

Now, you agree that as of the time of this filing, Herley was aware that there was a grand jury investigation into its business activities at least as early as April of 2004; is that correct?

A Yes.

Q And Herley had received subpoenas from the United States Attorney's Office in furtherance of that investigation; correct?

A Yes.

Q And those subpoenas were seeking among other things of the hard drives of the computers of the two most senior people from Herley; is that correct?

A Yes.

Q In addition to other officers of Herley; is that correct?

A Yes.

Q Okay. And in October 2004, the chairman of Herley was notified that he was a target of the investigation; is that also correct?

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2 A Yes.

3 Q Okay. And he also retained separate  
4 counsels to defend him in connection with that  
5 investigation from Herley in or about October 2004;  
6 is that also correct?

7 A Yes.

8 Q And you view these events as serious  
9 turns of event for Herley, did you not?

10 MR. SMITH: Objection.

11 THE WITNESS: I thought it  
12 was serious.

13 BY MR. MCNEELA:

14 Q So why wasn't any of that information  
15 included in Herley's 2005 disclosure?

16 A Based upon the fact that it was  
17 strictly an investigation and the outcome was totally  
18 speculative at best, there was no other further  
19 information, discussions with company counsel -- SEC  
20 counsel and discussions with the auditors who knew  
21 all of this was happening. It was -- we felt it was  
22 not appropriate at that time. It was a speculative  
23 nature and corporate counsel and that's why it's not  
24 in legal proceedings, if you will, that it doesn't  
25 have to be disclosed. There's no requirement to

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2 disclose that. It could be -- you know, many times,  
3 disclosure goes both ways, good and bad, and there  
4 was no disclosure. It was totally speculative. We  
5 didn't have the slightest idea which way it was going  
6 or -- or what may happen.

7 Q Okay. But you are aware of the --  
8 the -- the individual steps that I outlined for you;  
9 right, for the chronology of the Grand Jury  
10 investigation being in existence, that the Grand Jury  
11 was investigating Herley; right?

12 That's not speculative that there was  
13 in fact an investigation going on?

14 That's correct? You knew that that's  
15 a fact?

16 A Definitely, sure.

17 Q And the fact that the government  
18 called the chairman of the company, "You are under  
19 investigation," that -- that's not speculative, that  
20 is a fact?

21 A That is correct.

22 Q And the fact that he went and retain  
23 separate counsels; right, that is a fact too; is that  
24 correct?

25 A Correct.

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2 Q And the fact that he sought to have  
3 Herley pay for his separate counsels, that was a fact  
4 as well?

5 A That's true.

6 Q And the fact that Herley received  
7 subpoenas pursuant to the investigation was a fact?

8 A Right.

9 Q And the fact that two of the most  
10 senior people in the company, their documents being  
11 asked for by the government, that is a fact; right?

12 A Right.

13 Q And the fact that this investigation  
14 has started in July 2002 and was continuous until the  
15 time of this corporate filing, that is a fact as  
16 well?

17 MR. FRANK: Objection.

18 MR. SMITH: Objection.

19 THE WITNESS: Yes.

20 BY MR. MCNEELA:

21 Q Okay. So if you're considering in  
22 whether to invest in Herley stock, wouldn't you want  
23 to know that Herley's chairman was a target of a  
24 Federal investigation?

25 If you were considering whether to



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2 invest in Herley stock, wouldn't you want to know  
3 that Herley's chairman was a target of a federal  
4 criminal investigation?

5 MR. RUSSO: Objection.

6 MR. FRANK: Objection.

7 THE WITNESS: Stockholders  
8 would like to know everything that's  
9 going on in the corporation, what  
10 time I get up in the morning, what  
11 time I go to bed at night, too, and  
12 they would like to also know that I  
13 am presently talking to people about  
14 a present acquisition or maybe a  
15 divestiture. Just because a  
16 stockholder would like to know  
17 doesn't mean the regulations require  
18 disclosure. So stockholders do want  
19 to know everything. Of course, they  
20 love to know when I am talking to  
21 someone about an acquisition,  
22 divestiture or merger. But there  
23 are rules and regulations on what  
24 has to be disclosed and not  
25 disclosed and we follow those rules

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2 and regulations. So stockholders  
3 want to know everything. But that's  
4 why we have legal counsel and that's  
5 why we have independent auditors  
6 that are aware of these situations  
7 and also partake in what we should  
8 disclose and not -- not disclose.

9 I mean, I would like to know  
10 everything. I would like to know  
11 before any major public corporation  
12 is going to announce an award of  
13 \$500 billion, I would be a fool to  
14 say, no, I don't want to know that.  
15 I am a stockholder. Of course, I  
16 want to know the requirements or  
17 such that you don't have to report  
18 those things.

19 BY MR. MCNEELA:

20 Q And those -- you are saying the  
21 requirements are such that you don't have to report  
22 those things.

23 Is that your understanding of the  
24 requirements based on the advice of counsel?

25 A Yes.

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2 Q And based on anything else?

3 A Advice of counsel and knowledge,  
4 general knowledge. You don't have to report  
5 everything. That's why there are rules and  
6 regulations.

7 Q Sure. And acquisitions and -- and --  
8 and deals, was that commonplace for Herley?

9 This was part of their general  
10 business activity?

11 A Yes.

12 Q Okay. How about investigations by  
13 the federal government for contract fraud, was that  
14 part of Herley's common place?

15 A Whether it's -- whether it's  
16 commonplace or not, it's irrelevant. I may have  
17 never done an acquisition and I am sitting here and  
18 I'm going to acquire a company. I am in the throes  
19 of trying to acquire a company that's greater than  
20 Herley is, I have no obligation to disclose.

21 Q Does the fact that an acquisition  
22 generally threaten relationships with Herley's  
23 largest customer?

24 MR. FRANK: Objection.

25 THE WITNESS: It's not a

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question whether it may threaten.  
It is a question what the  
stockholder wants to know. Your  
comment was about the stockholder.  
Does the stockholder want to know?  
Yeah, he want -- he wants to know if  
I am going to acquire a company  
that's twice my size. But do I have  
an obligation to tell him? No.  
That's why you have the safe harbor  
regulations within the securities  
laws and everything else. So we  
comply with the laws and  
regulations. There was no  
obligation after discussions with  
Counsel, independent auditors, to  
disclose it. When the legal  
expenses got to be to the level they  
were, we disclosed that. And that's  
why it's disclosed in the company  
section, in the MBNA, if you would.

BY MR. MCNEELA:

Q Is it your testimony that the  
prospect of a corporate acquisition by Herley is of

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2 the same importance to shareholders if the prospect  
3 of a federal criminal investigation of Herley?

4 MR. FRANK: Objection.

5 MR. SMITH: Objection.

6 THE WITNESS: In my opinion,  
7 they are one and the same. It is  
8 the same principal.

9 BY MR. MCNEELA:

10 Q And you don't think that the  
11 possibility of a criminal investigation that can  
12 threaten Herley's relationship with its largest  
13 customer is any more material than the prospect of a  
14 random acquisition?

15 MR. FRANK: Objection.

16 THE WITNESS: What happens is  
17 your random acquisition goes sour  
18 and the company goes out of  
19 business. You don't think that's  
20 important, I do. It's just as  
21 important. You know, not every  
22 acquisition comes to be very  
23 successful. There are many  
24 companies that have been bought and  
25 have destroyed companies. So they

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2 all -- they all have importance, but

3 it's not for me to differentiate.

4 What I am saying is we comply with

5 what the rules and regulations are.

6 BY MR. MCNEELA:

7 Q Well, of course, that begets the  
8 question as to what the rules and regulations do in  
9 fact require?

10 MR. SMITH: Is that a  
11 question?

12 MR. MCNEELA: It's going to  
13 lead into a question.

14 MR. SMITH: Move to strike  
15 that colloquy there.

16 Wait for the question.

17 BY MR. MCNEELA:

18 Q Mr. Levy, can we please direct your  
19 attention to page -- to page 6 of the 2000 -- 2004  
20 10-K?

21 A Yes.

22 Q Do you see the paragraph entitled,  
23 "Diverse Product and Customer Base"?

24 A Yes.

25 Q Okay. That reads, We have a diverse

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2 product and customer base with only the U.S.  
3 Government in approximately 17 percent in rating of  
4 approximately 10 percent representing 10 percent of  
5 more of our fiscal 2004 revenues."

6 Did I read that correctly?

7 A Yes.

8 Q So you're informing the investing  
9 public that the government is the single largest  
10 customer of Herley?

11 A That is correct.

12 Q But at the same time, you did not  
13 think it was misleading to exclude the fact in this  
14 2004 10-K that Herley was in fact being investigated  
15 by its very -- by its largest customer for criminal  
16 violations?

17 MR. FRANK: Objection.

18 THE WITNESS: I believe I  
19 answered that, and I will answer it  
20 the same way again. There were  
21 rules, regulations based upon  
22 Counsel, based upon corporate  
23 counsel, based upon our SEC expert,  
24 based upon meetings with my  
25 auditors, we elected not to disclose

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2 it and we comply with the rules and  
3 regulations.

4 BY MR. MCNEELA:

5 Q Jumping down the following paragraph  
6 where it says, "Long standing industry relationships.  
7 We have established long standing relationships with  
8 the U.S. Government and other key organizations in  
9 the aerospace and defense industry after 38 years in  
10 the defense electronic industry."

11 Now, again, you're informing  
12 investors about this longstanding relationship you  
13 have with your single largest customer. But again,  
14 you don't see fit to disclose the fact that you are  
15 being criminally investigated by your single largest  
16 customer. Again, why not?

17 MR. FRANK: Objection.

18 MR. SMITH: Objection.

19 THE WITNESS: Same reason as  
20 before. If you want me to repeat  
21 it, I will repeat it. But it is the  
22 same -- it is the same principle and  
23 we, in fact, do have a good standing  
24 relationship with our -- with the  
25 U.S. Government.



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BY MR. MCNEELA:

Q Turn your attention to page 14 of the document. Do you see the paragraph entitled, "government Regulation"?

A Yes.

Q Okay. The first sentence of that paragraph reads, "Because of our participation in the defense industry, we are subject to audits by various government agencies for our compliance with the government" -- "with government regulations." And the last two sentences of that paragraph read, "We believe that we operate our business in material compliance with applicable laws and regulations. However, any failure to comply with existing or future laws or regulations could have material adverse impact on our business financial conditions and results of operations."

Did I read that correctly?

A Yes.

Q Okay. What was your basis for concluding that you were in material compliance with government regulations at the time you certified the statement?

A My state of mind and the company's

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2 state of mind was when this document was filed. At  
3 that time, we were in compliance to the rules and  
4 regulations of the U.S. Government, and the statement  
5 is totally true. That's why I make the statement,  
6 "We believe that we operate our business in material  
7 compliance with applicable laws and regulations."  
8 When this was certified, and that's when it was back  
9 in 2004, we believed that.

10 Q Even though you were being  
11 investigated by a federal Grand Jury?

12 A I believe you are still innocent  
13 until proven guilty in this country.

14 Q So you are saying you have no  
15 obligation to reveal any information relating to a  
16 criminal investigation until you're proven guilty?

17 MR. SMITH: Objection.

18 THE WITNESS: I am going to  
19 go back and repeat myself. We have  
20 counsel, we have what is required to  
21 be disclosed based on discussions  
22 with corporate counsel and SEC  
23 counsel, and it is not required to  
24 be disclosed. The auditors never  
25 raised it, counsel never raised it,

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2 we discussed it. And the fact that  
3 it's totally speculative, what will  
4 happen, if anything, was not  
5 disclosed.

6 BY MR. MCNEELA:

7 Q Was the suspension of Herley in 2006  
8 something that you would consider a material adverse  
9 impact on Herley's business?

10 MR. SMITH: Objection.

11 THE WITNESS: At that  
12 particular -- that day?

13 BY MR. MCNEELA:

14 Q Yeah.

15 A I wouldn't -- I wouldn't consider it  
16 a material adverse fact on what happened in the past.

17 Q I'm asking you just when the  
18 suspension came down, would you consider that a  
19 material adverse impact on Herley's business?

20 MR. SMITH: Objection.

21 THE WITNESS: That we're  
22 indicted, we were now indicted.  
23 Something happened. Okay. The  
24 effect of which you still don't  
25 know.

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2 BY MR. MCNEELA:

3 Q Okay. I am just looking for an  
4 answer to my question which is, did you believe the  
5 suspension of Herley by the Navy was a material  
6 adverse impact on Herley's business?

7 MR. SMITH: Objection.

8 THE WITNESS: No.

9 BY MR. MCNEELA:

10 Q Did you believe the indictment of  
11 Herley Industries, Inc. was a material adverse impact  
12 on Herley's business?

13 MR. SMITH: Objection.

14 THE WITNESS: I don't believe  
15 it was a material adverse impact on  
16 the business, but I do believe it  
17 should be disclosed.

18 BY MR. MCNEELA:

19 Q Was the indictment of Mr. Blatt in  
20 your opinion material adverse impact on Herley's  
21 business?

22 MR. FRANK: Objection.

23 MR. SMITH: Objection.

24 THE WITNESS: I don't believe  
25 so, but it should be disclosed.

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BY MR. MCNEELA:

Q Now, in the 2005 10-K, when you disclosed the existence of the investigation, was it not still speculative at that point in time?

A In 2005?

Q Right.

A Are you referring to the same?

Q Right.

A You are referring to the MDNA?

Q Right, to page 21.

A (Reviewing.) That had to do with the materiality within the MDNA of selling and general administrative expenses. And whereby I believe -- and I don't have it -- I can't tell if this is page 21. But in the MDNA, it was \$965,000, was an increase in our legal expenses, and that was a significant number and we disclosed why it increased because of Robinson Labs and the investigation.

Q So if the investigation had not resulted in an increase in legal fees that were being paid out, is it your testimony that otherwise would not have been disclosed in the 2005 10-K?

MR. FRANK: Objection.

THE WITNESS: That's

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2 speculative. But if it was totally  
3 immaterial and the difference was  
4 \$2, it probably wouldn't have been  
5 disclosed in the MDNA either.

6 BY MR. MCNEELA:

7 Q Well, that's not what I'm asking you.  
8 Putting aside my -- the legal fee issue and talking  
9 about the state of the investigation as of the filing  
10 of the 2005 10-K, which was July 31st, 2005, did you  
11 believe the investigation was still speculative at  
12 that point in time?

13 THE WITNESS: No, I didn't  
14 say the investigation was  
15 speculative. That was real.

16 BY MR. MCNEELA:

17 Q The outcome of the investigation, was  
18 that still speculative?

19 A Still speculative.

20 Q So then if we take away the increase  
21 in legal expenditures, it's your testimony then that  
22 the investigation in 2005 was still -- the results  
23 were still speculative and you would not have  
24 included in your disclosure?

25 A That is correct.

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Q Now, turning your attention back to Exhibit 15.

A Yes.

Q Back to the government regulation portion.

A Do you have the page, please?

Q Sure, sorry. It would be page 14 on that document.

A Okay.

Q Now, the last sentence of that paragraph reads, "However, any failure to comply with the existing or future laws or regulations could have material adverse impact on our business financial condition and results of operations."

Is -- isn't that statement taking into account the possibility of findings that Herley wasn't in compliance with rules and regulations?

MR. SMITH: Objection.

MR. FRANK: Objection.

THE WITNESS: No, it is just -- it is a statement that's saying making the reader aware, could have. It doesn't say would. It just could. It may have, may or may not

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2 have.

3 BY MR. MCNEELA:

4 Q So you are saying that that certain  
5 -- certain occurrences could have material adverse  
6 effect on Herley's business, the things that could  
7 would be finding that they weren't in material  
8 compliance with rules and regulations; right?

9 MR. FRANK: Objection.

10 MR. SMITH: Objection.

11 THE WITNESS: I read it as  
12 could have, which means may.

13 BY MR. MCNEELA:

14 Q All right. And --

15 A And was speculative.

16 Q Well, right, could have.

17 And in saying the things that could  
18 have happened, doesn't the criminal investigation  
19 relate to that?

20 MR. FRANK: Objection.

21 MR. SMITH: Objection.

22 THE WITNESS: I am going to  
23 go back to, as I told you before, if  
24 it was required to be disclosed, we  
25 would have disclosed it. Based upon



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discussions with Counsel, with our independent auditors, it was not required to be disclosed and therefore we did not disclose it. That's why we pay attorneys and auditors big money because we -- we use our areas of expertise throughout the -- with our Counsel and our auditors.

MR. MCNEELA: Let's take a two-minute break.

THE VIDEOGRAPHER: Going off the record at 2:53 p.m.

(Whereupon a recess is taken.)

THE VIDEOGRAPHER: Going back on the record at 3:08 p.m.

BY MR. MCNEELA:

Q Mr. Levy, I believe you previously mentioned that you received certifications from the heads of divisions within Herley; is that correct?

A Yes, that's true.

Q Who sent you those certifications?

A All the general managers, Mitch

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2 Tuckman, Howard Eckstein, whoever was running, if it  
3 was Lancaster, Rich Pourier if it was New England,  
4 Yonah Adelman; if it was our Israeli operation, then,  
5 you know, the general managers of the various  
6 entities.

7 Q And was that practice in place in  
8 2004, 2005, 2006?

9 A Yes, that practice came in place when  
10 Sorbanes-Oxley came in.

11 Q Now, those certifications, what did  
12 they contain?

13 A Effectively the same certification  
14 that I signed both for, as CEO and as my CFO signed,  
15 their -- their financial officer signed the same  
16 certification to -- and by the way, they all went to  
17 my CFO. Okay. And, you know, he would say, I got  
18 the certification from Mitch, I got it from Howard, I  
19 got it from Rich, you know, that we have those. I am  
20 looking to find the certification. I don't think we  
21 have the '04. I don't think -- has it. Let me take  
22 a look at '05. (Reviewing.)

23 Q I will cut to the chase here. Please  
24 mark this as Exhibit 17.

25 (Whereupon the exhibit is